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California State Senate



STATE SENATOR
QUENTIN L. KOPP

EIGHTH SENATORIAL DISTRICT
REPRESENTING SAN FRANCISCO AND SAN MATEO COUNTIES

March 1, 1996

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Dwight Helmick, Jr.
Commissioner
California Highway Patrol
2555 First Avenue
Sacramento, Ca 95818

Dear Mr. Helmick:

The Budget Act of 1992 contained Supplemental Report Language regarding workers' compensation and industrial disability retirement (IDR) costs for the California Highway Patrol. Pursuant to the SRL, the department submitted a report in 1993 addressing the specified concerns.

It is my intention to pursue the 1992 budget action with a budget subcommittee informational hearing on the current status of workers' compensation and IDR costs for the CHP. The hearing is scheduled for March 14, 1996. At that time, I would like the department to present a status report on actions since the 1992-93 Budget and such further actions, if any, as are necessary to address any rising disability related costs. Specifically, I request the following information:

1. The number of workers' compensation claims and the types of injuries being claimed, job-related or otherwise, for each of the past five fiscal years, beginning with 1991-92;
2. Identification of any financial, or otherwise, incentives inherent in the current workers' compensation and IDR programs;
3. A description of specific actions taken to control workers' compensation and IDR costs, including preventive measures by the department, legislative actions, and fraud enforcement tactics by the department;

Mr. Helmick
February 28, 1996
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4. An assessment of the effect of such actions on workers' compensation costs and the effect on the incidence and costs of IDR for the department;
5. A recommendation for additional cost containment methods, if necessary; and
6. The amount of total outstanding liability for all unsettled workers' compensation and IDR claims.

The above request is in addition to any others that the Legislative Analyst may have.

The immediate and full cooperation of you and your staff is appreciated to ensure that the information is submitted to the Legislative Analyst no later than March 6, 1996. If there are any questions, contact me or Mr. Chris Janzen of the subcommittee staff at 445-5202.

Sincerely yours,


Quentin L. Kopp
Chair, Subcommittee #2

QLK/cdj

PRESENTATION TO THE SENATE BUDGET SUBCOMMITTEE

Commissioner Dwight O. Helmick

California Highway Patrol

March 14, 1996

Good morning/afternoon. I am here today to speak with you about a matter of shared concern which has a significant fiscal impact on California taxpayers -- workers' compensation and industrial disability retirement (IDR) costs for the California Highway Patrol (CHP). Before I discuss the "nuts and bolts" of these costs and the Department's response, please permit me to present two scenarios which illustrate the unique challenges the CHP faces in dealing with this problem.

If you will look at item #2 in the informational package you will see a comparison of the retirement compensations potentially available to an officer. In the first column the annual net service retirement allowance totals slightly over \$37,000.00. The second column depicts this same officer's compensation if he or she claims disability retirement. The annual net retirement allowance alone comes to almost \$5,000.00 more. That does not even include the additional continuing workers' compensation costs which could average \$50,000.00 or more throughout retirement. Most significantly, you can see that the total cash compensation *prior to retirement* is almost \$114,000.00 greater for a disability retirement!

As a comparison, look at a typical former chief's retirement figures (that's item #3 in your package). Without IRC Section 415 (which places limits on the annual benefit that a person can receive from a defined benefit plan like PERS), the annual net retirement allowance would be nearly \$63,000.00.

With 415, it decreases to about \$56,000.00. And if disability retirement is claimed, the annual net retirement allowance would climb to over \$78,000.00. Most importantly, the total cash compensation *prior to retirement* is more than \$273,000.00 greater for a disability retirement!

Because of the nature of the work, most CHP Officers with any substantial time on the job will experience some degree of injury during their careers. Just the normal wear and tear to the body from 30 years of law enforcement activities, add up. Most employees performing these activities do sustain injuries which could result in a legitimate disability claim. If you place yourself in their position -- the end of a long law enforcement career with literally thousands of dollars hanging in the balance--- which compensation would you choose?

As you can clearly see, we face a real dilemma in selecting an approach which adequately responds to legitimate needs while assuring that misuse of the system will be identified and punished. Let me briefly outline how we have responded to this challenge. Since 1993, the CHP has:

- Created a complete Injury and Illness Case Management manual which thoroughly describes the proper approach to this problem.
- Completed mandatory training of all supervisors and managers in injury/illness case management.
- Completely revised the Departmental Occupational Safety manual paying special attention to those activities most likely to result in injury.
- Revised the Evidence Manual to incorporate instruction on safer handling of drugs and other hazardous materials.

- Created a “Coping With Your Injury” booklet which outlines the methods and procedures an employee can utilize to minimize the amount of time required to return to full duty.
- Developed and published an Injury/Illness Prevention manual.

These publications are included in the information package you received. I would be happy to discuss them in detail when you have had the opportunity to become familiar with their contents. Finally, and perhaps most importantly,

- The Department has reorganized its Bureau of Internal Affairs to ensure the CHP will continue to maintain its obligation to preserve the public trust through renewed emphasis on internal integrity.

A key element of this reorganization was the creation of a special four-person Fraud Unit which includes two full-time investigators who devote special attention to questionable disability cases which have been referred to them by the Public Employees Retirement System (PERS), the State Compensation Insurance Fund (SCIF), the CHP Disability and Retirement Section, and our own Division Commanders. The Fraud Unit not only gathers evidence for both criminal charges and other administrative actions, but also acts as a clear deterrent. In addition, the unit provides training to CHP Commanders on Workers’ Compensation fraud issues.

The CHP has also sought to address the substantial increase in the cost of the workers’ compensation program by analyzing vocational rehabilitation benefit awards to identify and reduce inappropriate service levels, eliminate excessive vocational testing,

increase the number of successful return to work plans, and reduce the number of months an injury case is carried on disability payments before a vocational placement is made.

A key factor for consideration when evaluating CHP disability retirements must be the high-risk environment our officers work in. Daily enforcement activity includes not only the physical and emotional stresses associated with subduing combative subjects and arresting armed suspects, but also those so-called "routine" risks inherent in stopping high-speed violators, pursuing those who attempt to evade arrest, and carrying out responsibilities while exposed to moving traffic at accident scenes and other traffic stops. In total, the working environment of the CHP is a higher risk environment than that of many local public safety agencies.

Senator Kopp also has asked me to address six specific questions which he posed in a letter dated March 1. The detailed responses are included in your informational package, but I would like to briefly touch on each issue..

First: Provide a compilation of the workers' compensation claims, and types of injuries being claimed, job-related or otherwise, for each of the past five fiscal years, beginning with 1991-92.

As you can see in item #4 of your package, claims by uniformed personnel have dropped from 5,086 in 1991 to 4,728 in 1995, with a peak of 5,320 in 1993. A majority of claims involve orthopedic problems, with injuries to the back being the most common.

Second: Define the incentives, financial, or otherwise, inherent in the current workers' compensation and industrial disability retirement programs.

Workers' compensation incentives include: a liberal permanent disability rating system; tax free benefits; assignment of the burden of proof to the employer; defining certain classes of injury as presumptive; assessing liability for cost incurred in the discovery process to the employer.

Industrial disability retirement incentives include: 50 percent of employee's retirement income *not subject* to income tax; gainful employment with a non-PERS employer possible even while still drawing *full* retirement benefits; *mandatory* reinstatement to peace officer status at current salary and benefits, should the employee's medical condition improve; and, *exemption* from IRC Section 415 which limits retirement earnings for highly compensated employees.

Third: Describe specific actions taken to control workers' compensation and IDR costs, including preventive measures by the department, legislative actions and fraud enforcement tactics by the Department.

Well, the answer to this question is difficult to put into one paragraph, but let me briefly say that we have taken many steps to control costs including the Injury and Illness Prevention Program, injury case management, and heightened awareness of the dangers of and procedures for safe handling of drugs, chemicals and other hazardous materials.

As I mentioned earlier, the Bureau of Internal Affairs Special Investigation Unit has aggressively pursued IDR fraud. Since its inception, this unit has investigated 85 cases, obtaining five criminal convictions and is currently investigating ten open cases. In addition, there have been eight arrests and eight employee terminations for workers' compensation fraud crimes. Currently there are two criminal prosecution cases

pending. Part of this unit's effectiveness lies in the broad internal publicity given to its efforts. There is no doubt that such high-profile exposure has served as a deterrent to such conduct.

Fourth: Assess the effect of such actions on workers' compensation costs and the effect on the incidence and costs of IDR for the Department.

In addition to what I just mentioned, you have the numbers in front of you in item #4 of your package. Briefly, since fiscal 1992/93, there has been over a ten percent decrease in WCP costs in spite of a \$1.35 million dollar increase in fiscal 1994/95 due to increased charges by SCIF which were negotiated in the DPA master contract. The number of annual disability retirements has fallen from a high of 162 in 1993 to 118 for each of the last two years.

Fifth: Provide CHP recommendations for additional cost containment methods.

Also in item #4 we offer several suggestions for legislation which we believe would help to contain costs. These include "capping" disability retirement benefits for those eligible for a maximum service retirement to include compensation only for medical costs related to the injury; reshaping the medical evaluation process into an arbitration procedure; rewriting Labor Code language to require that WCAB Judges interpret

workers' compensation decisions "equitably, rather than "liberally," as now provided; and establishing of an outside earnings offset for retirees which mirrors current PERS criteria.

Sixth: Calculate the total outstanding liability for all unsettled workers' compensation and IDR claims.

Unfortunately I cannot provide these numbers at this time. This information has been requested from SCIF and PERS and is expected within 25 days. I will be happy to provide the members of the committee with the data as soon as we receive it.

I have outlined the major changes we have taken to minimize the misuse of the system. But realistically there is only so much that we can do. I would like to suggest that the real seeds of change can come from decisions only you can make.

As a Department, we can only manage cases, maintain focus on and response to fraudulent activity and educate our employees on the relevant issues. Unfortunately, we have no control of the workers' compensation and disability retirement system itself. So, we can assure you that where fraud or other misuse is identified, we will take appropriate action. We will continue to aggressively investigate instances where the system is being abused and we will educate all employees about the seriousness of the situation.

But the real change must more appropriately come through a significant transformation in the system itself. Let me restate the suggestions I mentioned earlier:

- Amend Labor Code Section 139.5 to incorporate language specifying that injured employees who are eligible for maximum service retirement but opt to retire on disability shall receive no additional benefits other than medical costs related to the injury.
- Modify the medical evaluation process to be patterned after the arbitration procedure currently being used to resolve employee/employer relation disputes.
- Amend Labor Code Section 3202 requiring WCAB Judges to interpret workers' compensation laws "equitably" rather than "*liberally* and in favor of the employee" as now directed by the language of the code.
- Establish an earnings offset for retirees employed outside PERS by restricting combined earnings (disability retirement plus outside earnings) to no more than the employee's salary level upon retirement. (Similar to Government Code Section 21300).

I believe adoptions of these steps would contribute greatly to reducing the existing monetary incentives of the workers' compensation system.

Thank you for giving me the opportunity to present the CHP perspective on these issues. I would now be happy to respond to any questions you might have.

TYPICAL RETIREMENT
FOR AN OFFICER

Age: 55 Years of Service: 30 Salary: \$4,432.38 Vacation: 400 Hours			Sick Leave: 400 Hours CTO: 40 Hours Personal Leave: 100 Hours		
BENEFIT		SERVICE RETIREMENT		DISABILITY RETIREMENT	
SICK LEAVE		None ¹		<ul style="list-style-type: none">• 400 accrued hours• 120 additional hours earned while on 4800.5 time and sick leave prior to retirement• Total of 520 hours paid• \$13,498.61²	
VACATION		<ul style="list-style-type: none">• 400 accrued hours• 80 additional hours earned during lump sum period• Total of 480 hours paid• \$12,289.78		<ul style="list-style-type: none">• 400 accrued hours• 448 additional hours earned while on 4800.5 time and during lump sum period• Total of 848 hours paid• \$21,557.48²	
CTO		<ul style="list-style-type: none">• 40 hours paid lump sum• \$1,007.36		<ul style="list-style-type: none">• 40 hours paid lump sum• \$1,007.36²	
PERSONAL LEAVE		<ul style="list-style-type: none">• 100 hours paid lump sum• \$2,518.40		<ul style="list-style-type: none">• 100 hours paid lump sum• \$2,518.40²	
4800.5		None		One Year = \$53,188.56 ^{2, 3}	
WORKERS' COMPENSATION		None		<ul style="list-style-type: none">• \$37,847.00 Cash Benefit³• \$12,153.00 Vocational rehabilitation and medical payments• Total \$50,000.00• Paid lifetime medical expenses	
TOTAL CASH COMPENSATION PRIOR TO RETIREMENT		\$15,815.54		\$129,617.41	
ANNUAL <u>NET</u> RETIREMENT ALLOWANCE		\$37,051.56		\$41,886.12	

¹ May count towards service credit.

² Payment could be higher should there be any salary increases while employee is on payroll.

³ This compensation is not subject to federal or state income tax.

TYPICAL RETIREMENT FOR A DEPUTY CHIEF

Chief's Age: 54 Years of Service: 31 Salary: \$8,473.30				Sick Leave: 1,984 Hours Annual Leave: 640 Hours Personal Leave: 152 Hours			
BENEFIT	SERVICE RETIREMENT <u>WITHOUT APPLYING</u> IRC SECTION 415	SERVICE RETIREMENT <u>APPLYING IRC</u> SECTION 415	DISABILITY RETIREMENT				
SICK LEAVE	NONE ¹	NONE ¹	<ul style="list-style-type: none"> 1,984 accrued hours \$96,672.65³ 				
VACATION	<ul style="list-style-type: none"> 640 accrued hours 108 additional hours earned during lump sum period Total of 748 hours paid \$36,460.87 	<ul style="list-style-type: none"> 640 accrued hours 108 additional hours earned during lump sum period Total of 748 hours paid \$36,460.87 	<ul style="list-style-type: none"> 640 accrued hours 864 additional hours earned while on 4800.5 time and during lump sum period Total of 1,504 hours paid \$73,563.65³ 				
PERSONAL LEAVE	<ul style="list-style-type: none"> 152 hours paid lump sum \$7,317.85 	<ul style="list-style-type: none"> 152 hours paid lump sum \$7,317.85 	<ul style="list-style-type: none"> 152 hours paid lump sum \$7,317.85³ 				
4800.5	NONE	NONE	One Year = \$101,679.60 ^{2, 3}				
WORKERS' COMPENSATION	NONE	NONE	<ul style="list-style-type: none"> \$37,847.00 Cash Benefit² \$12,153.00 Vocational rehabilitation and medical payments to vendors. Total \$50,000.00 Paid lifetime medical expenses 				
TOTAL CASH COMPENSATION PRIOR TO RETIREMENT	\$43,778.72	\$43,778.72	\$317,080.75				
ANNUAL <u>NET</u> RETIREMENT ALLOWANCE	\$62,845.92	\$56,230.56	\$78,162.12				

¹ May count towards service retirement.

² This compensation is not subject to federal or state income tax.

³ Payment could be higher should there be any salary increases while employee is on payroll.

The following are responses to questions regarding CHP Workers' Compensation and Industrial Disability Programs as requested by Honorable Senator Quentin L. Kopp.

Question # 1

The number of open workers' compensation claims per year as reported by the State Compensation Insurance Fund are as follows:

	1991	1992	1993	1994	1995
Uniformed	5,086	5,234	5,320	5,225	4,728
Non-Uniformed	360	434	510	554	592
Total	5,446	5,668	5,830	5,779	5,320

The majority of claims being made are orthopedic, of which injuries to the back are the most common. These claims are classified according to the injured body part as follows: back; lower and upper extremities and neck injuries. Cardiovascular and psychological disorders are also common claims made by uniformed personnel.

Question # 2

Among the most notable financial incentives in the current workers' compensation program are:

- Liberal Permanent Disability Rating System.
- Tax Free Benefits (4800.5, Temporary Disability, Permanent Disability, Vocational Rehabilitation)
- Burden of proof lies with the employer, and the employer is liable for all costs incurred in the process of discovery.
- Certain classes of injuries are presumptive (cardiovascular and pneumonia)

Uniformed employees of the CHP that sustain job-related injuries are entitled to receive full salary continuation benefits for a period of up to 52 weeks pursuant to Labor Code Section 4800.5. If their condition has not stabilized by the time those benefits are exhausted, SCIF provides them, if eligible, with Temporary Disability (TD); Permanent Disability (PD), and Vocational Rehabilitation (VR) benefits.

The Public Employees' Retirement System (PERS) governs all retirement matters for for all employees of the CHP. This includes Service Retirements, Ordinary Retirements, and Industrial Disability Retirements.

Industrial Disability Retirement (IDR) is a retirement benefit afforded to various safety officer categories in both State and municipal jurisdictions. This benefit was established to provide Officers with an income that would meet their basic needs if they suffered an industrial injury that permanently or indefinitely incapacitated their ability to fully perform the duties of a Peace Officer. This retirement benefit was established in recognition of the employment hazards unique to safety officer categories.

The IDR benefit for uniformed members of the CHP is based upon Government Code Section 21292. Pursuant to this section, a patrol member shall be entitled to receive a disability retirement allowance of 50 percent of the average highest twelve months of their salary at the time of retirement.

Among the most notable incentives inherent to the existing industrial disability retirement program are:

- Reduced income tax for retirement allowances.
- No reduction in IDR benefits upon employment outside of PERS contracting agencies.
- Mandatory reinstatement to peace officer status at current salary and benefits.
- IRS Rule 415. Employees on Industrial Disability Retirement are not subject to limitations pursuant to this section.

Question # 3

The Department has placed more emphasis on injury case management through local Area Commanders. Employees have become aware of the factors causing and methods of reducing stress and cumulative trauma disorders. This has been accomplished through the implementation of a new manual containing policy changes regarding injury and illness case management. All Managers and Supervisors have received required in-house training regarding injury and illness case management.

Another step towards controlling costs is the Department's Injury and Illness Prevention Program (IIPP). IIPP requires that all Commands establish an Occupational Safety Committee which shall meet at least quarterly. The responsibilities of the various levels of committees are:

- Departmental Occupational Safety Board (DOSB), the Department's policy-level occupational safety organization reporting directly to the Commissioner.
- Division Occupational Safety Committee(DOSCs), the control-level safety committees for Division operations, assisting the Division Chief in administering occupational safety responsibilities.
- Command Occupational Safety Committee (COSCs), the operational-level committees that assist the Commander in achieving compliance with occupational safety requirements and resolving health and safety issues in the local Command.

In addition, the Department's Evidence Manual has been revised to initiate policy regarding safer handling procedures for drugs, chemicals and other hazardous materials.

A major reorganization of our existing Bureau of Internal Affairs resulted in the creation of a special Investigation Unit (IU). The IU consists of four investigators, two of which are devoted entirely to questionable injury claims to determine if inappropriate actions exist. Since its inception in October 1991, the IU has obtained five criminal convictions and is currently investigating over 10 cases. The IU personnel have focused on comprehensive training of Departmental Managers and Supervisors in how to identify fraud. (Attached are news articles of several noteworthy cases).

Additionally, their efforts to combat fraud have been fully publicized within our Department. This internal "publicity" has served as a deterrent to such conduct and has continued to make our employees aware that the Department will maintain an aggressive posture towards eliminating abuse of the workers' compensation and retirement systems.

Furthermore, uniformed members of the CHP that attempt to voluntarily reinstate are now subject to a more comprehensive background evaluation including physical and psychological medical evaluations.

The Department is strongly committed to providing a safe work environment. This is evident in the comprehensive programs implemented starting with pre-employment evaluations and following through every phase of employment and retirement .

Question # 4

An assessment of the effect of the above mentioned actions on the Departments WCP and IDR programs is best exemplified as follows:

Chart Comparison (uniformed and non-uniformed employees, 4800.5 time included)				
WCP	1991/92	1992/93	1993/94	1994/95
Amount	\$40,972,024	\$42,185,227	\$36,976,431	\$38,286,277 (*)
Change	13.67%	2.96%	-12.34%	3.42%

*(According to DPA there was a 1.35 million dollar increase in service charges by SCIF as negotiated in the master contract with DPA).

IDR	1991	1992	1993	1994	1995
# of Retirements	120	135	162	118	118

Change	8.1%	12.5%	20%	-27.16%	0%
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Questions # 5

Additional cost containment methods recommended are proposed Legislation to:

- Amend Labor Code Section 139.5 to incorporate language specifying that injured employees who are eligible for maximum service retirement and opt to disability retire are not entitled to additional benefits other than medical costs related to the injury.
- Modify the medical evaluation process to be patterned after the arbitration procedure currently being used to resolve employee/employer relation disputes.
- Amend Labor Code Section 3202 requiring WCAB Judges to interpret workers' compensation laws "equitably" rather than the current language of "liberally and in favor of the employee".
- Establish an earnings offset for retirees employed outside PERS by restricting combined earnings (disability retirement plus outside earnings) to no more than the employee's salary level upon retirement. (Similar to Government Code Section 21300).

Questions # 6

The amount of total outstanding liability for all unsettled workers' compensation claims has been requested from SCIF. It is expected it will take a period not to exceed 25 working days to obtain this information.

The amount of total outstanding liability for IDR claims has been requested from PERS. It is expected it will take a period not to exceed 25 working days to obtain this information.